(16)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1043 of 2001

APPELLANT — Amlu Ram, s/o Mangari Ram, 45 years, occupation Agriculture, resident of village Askara, Madvasarai, Police Station. Kamleshwarpur, Distt. Sarguja (C.G.)

Versus

RESPONDENT — State of Chhattisgarh, Through Police Station- Kamleshwarpur, Distt.Sarguja (C.G.)

Criminal Appeal No. 1044 of 2001

APPELLANT — Mangaru Ram, s/o Amlu, aged about 25 years, occupation Agriculture, resident of village Askara, Madvasarai, Police Station. Kamleshwarpur, Distt. Sarguja (C.G.)

Versus

RESPONDENT — State of Chhattisgarh, Through Police Station- Kamleshwarpur, Distt.Sarguja (C.G.)

Criminal Appeal No. 1045 of 2001

APPELLANT — Mangal Sai, s/o Bakhori, aged about 50 years, occupation Agriculture, resident of village Askara, Madvasarai, Police Station. Kamleshwarpur, Distt. Sarguja (C.G.)

Versus

RESPONDENT — State of Chhattisgarh, Through Police Station- Kamleshwarpur, Distt.Sarguja (C.G.)

Appearance:

None for the appellants.

Shri N.K. Mehta, Panel Lawyer, for the State.

JUDGMENT
(16.07.2007)

Sunil Kumar Sinha, J.

(1) These are the 3 jail appeals arising out of a common judgment dated 15.10.2001 passed by the 1st Addl. Sessions Judge, Ambikapur, in S.T.No.196/1999, whereby the appellants were convicted u/s 325/34 I.P.C., and sentenced to undergo R.I. for 3-3 years and to pay a fine of Rs.500-500/-, in default of payment of fine, to further undergo R.I. for 6-6 months.

(2) In these cases, the appellants have already undergone their sentences, therefore, for hearing, notices were issued to them, on which even after service, no one caused appearance on behalf of appellants Amluram & Mangaru Ram whereas a report has been received that appellant Mangal Sai has died. Since no steps have been taken for substitution of Mangal Sai, his appeal (Cr.A.No.1045/2001) stands abated and the judgment is being passed on remaining two appeals filed on behalf of Appellants Amlu Ram and Mangaru Ram.

(3) The appellants were charged u/s 307 read with section 34 of I.P.C. The brief facts are that injured Mungla Ram (P.W.1), was having inimical relations with the appellants on some land dispute. On 27.3.1999, at about 8 p.m., when he was returning back to his house, the appellants armed with deadly weapons like *lathi* and arrow stopped him on the way and started assaulting him. On this, he fell down on the ground and the *Tangia*, which he was holding, slipped from his hands, which was picked up by appellant Mangaru, who gave a *Tangia* blow on his head. On hue and cry, his wife Bifaiya Bai (P.W.8) and Ram Kuwari (P.W.10) came over there and took him to their house and thereafter, a report Ex.P.1 was lodged. The victim was sent for medical examination and was examined by Dr. G.Prasad (P.W.3) who noticed the following injuries and prepared his report Ex.P.4.

1. An incised wound in size of 1 x ½ x ½ cm on the anterior surface of left leg in middle 1/3rd part, clotted blood present.
2. A lacerated wound in size of ½ x ½ x ½ cm on the anterior surface of left leg on the upper 1/3rd part, dry, obliquely placed.
3. Swelling of right elbow joint and upper half part of right fore arm. Two abrasions - (a) 5 x 12 cm & (b) 3 x 4 cm. both irregular in shape and obliquely placed, clotted blood present.
4. One abrasion on lateral surface of right upper arm on middle 1/3rd part, in size of 2 x 3 cm, dry, clotted blood present.
5. One lacerated wound on the left parietal bone in size of 6 x ½ x ¼ Cms., obliquely placed with oozing (bleeding) present.
6. One lacerated wound on the occipital bone in size of 5 x ¼ x ¼ Cms., obliquely placed with oozing present.
7. There was complaint of pain on the back but no external injuries were seen.

According to him, injuries no.1 to 4 were simple in nature and for injury no.5 & 6, he advised for X-Ray Examination. On further examination, the victim was sent to Dr.M.K.Jain (P.W.2) who found that there was no bony injury so far as skull was concerned. However, the victim has sustained fracture of his right ulna bone. He gave his report Ex.P.2. The X-Ray plates (Ex.P.3) were also collected. After usual investigation the charge sheet was filed.

(4) On trial, the learned Sessions Judge acquitted the appellants for the offence punishable u/s 307/34 I.P.C., however, on the basis of evidence of the victim as well as eye witnesses and the two Doctors, they were convicted u/s 325/34

I.P.C. and sentenced to undergo imprisonment and to pay fine as aforementioned.

(5) Victim Mungla Ram (P.W.1) has stated that when he was returning to his house on the fateful day, he was stopped on the way by the appellants who assaulted him with the help of *lathi*, arrow and *Tangia*. He has also stated the details as to how the assault took place, and who gave which injury. His evidence is supported by the evidence of his wife Bifaiya Bai (P.W.8) and his daughter Ram Kuwari (P.W.10). The above evidence of the victim is further supported by the evidence of Dr.G. Prasad (P.W.3) & Dr.M.K. Jain (P.W.2), who have medically examined him on the requisition of the police.

(6) The Sessions Court has held the evidence of the victim to be trustworthy and also to be supported by the evidence of two eye witnesses and the Doctors. Even after going through their evidence, it does not appear that either a concocted story was prepared or there is a case of false implication. Their evidence is natural, cogent, reliable and trustworthy. On the basis of the evidence of the Doctors, the trial Court took this view that in fact, this was not a matter of attempting the life of the victim and taking such view, it recorded the finding of acquittal u/s 307/34 I.P.C., and has convicted the appellants u/ss 325/34 I.P.C.

(7) In the matter of ***Sarju Prasad -Vs- State of Bihar AIR 1965 S.C. 843,*** the Apex Court held that in order to bring the offence home to accused, the prosecution must establish that his intention was one of the three kinds mentioned in section 300 I.P.C. The state of mind of the accused has to be deduced from surrounding circumstances and motive would be a relevant circumstance and where the evidence is not sufficient to establish with certainty, existence of requisite intention of knowledge of accused, the accused can be convicted only u/s 324 and not u/s 307 IPC. Again in the matter of ***Hari Kishan***

& State of Haryana –Vs- Sukhbir Singh and others AIR 1988 S.C. 2127, the Apex Court further held that u/s 307 IPC, what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". U/s 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

(8) After going through the entire evidence and after hearing learned counsel for the State, I am of the opinion that the conviction and sentence awarded by the Sessions Court does not warrant interference by this Court. The appeals have no merits and the same are liable to be dismissed.

(9) In the result, Cr.A.No.1043/2001 & Cr.A.No.1044/2001 are dismissed on merits whereas Cr.A.No.1045/01 is dismissed as abated.

Sd/-
Sunil Kumar Sinha
Judge

Rao